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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,536	07/18/2005	Donna Hui-Ing Hwang	3975.043	7321
30448	7590	10/02/2007		
AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			EXAMINER SOROUSH, LAYLA	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 10/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/542,536	Applicant(s) HWANG, DONNA	
	Examiner Layla Soroush	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The Office Action is in response to the Preliminary Amendment filed July 18, 2005. Claims 1-19 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term a castor oil "derivative," is rendered indefinite. One of ordinary skill in the art could not ascertain and interpret the metes and bounds of the patent protection desired as claimed in this case, since one of ordinary skill in the art would clearly recognize that many various groups could possibly be substituted in each instance. As a result, any significant variation would be reasonably expected to alter the compound, e.g. physical, chemical, physiological effects and functions.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackles (WO 86/05389 – IDS) view of Hatfield (US Pat. No. 4,708,812) and Bergmann et al. (6,274,128).

Mackles teaches an anhydrous cosmetic for the hair and scalp comprising 10 – 50% activated zeolites of aluminosilicate. The ratio of Si to Al is 1.1 to 0.1 (see claim 5). The composition further contains liquid oils such as triglycerides, a foaming component, and a propellant. Non-ionic surface-active agents are in the form of sorbitan stearates, PEG-400 dioleates or lecithin and are used in 3 – 15 wt % of the composition (claim 21). The softeners used are glycerol stearates, silicone oils or isobutyl isobutyrate. Cabosil M-5 is used as a thickening agent. The addition of polyvalent alcohols is not disclosed, nor do any of the examples contain polyvalent alcohols. The composition heats up upon contact with moist hair (see for example page 14):

The combination of water relative to the weight of the product and temperature increase of the method claims is clearly envisaged by the teachings of the prior art. The prior clearly teaches the composition heats up upon contact with moist hair.

The reference fails to teach the specific thickeners “polyethylene, 12-hydroxystearic acid, clay, castor oil derivatives or waxes” as claimed in the present claims.

Hatfield is solely incorporated to show that thickeners are inclusive of clays and Cabosil M-5.

Bergmann et al. teaches a self-warming hair conditioning composition which includes kaolin (clay) which are useful as fillers (col 6, lines 62-65). Conditioners of the

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composition are hydrocarbons inclusive of caprylic/Capric triglyceride and wax (col 4, lines 50-67 and col 5, lines 1-5).

To a person with ordinary skill in the art at the time the invention was made the substitution of clays for Cabosil M-5 is obvious because both compounds are thickeners taught to be interchangeable. The motivation to use clays such as kaolin is because (1) both have similar compositions with similar efficacies (2) Bergmann et al. teaches the compositions used in a similar self-warming hair conditioner, and, therefore, the interchangeable use of either one will successfully yield similar results.

Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackles (WO 86/05389 – IDS) view of Hatfield (US Pat. No. 4,708,812) and Bergmann et al. (6,274,128), as applied to claims 10-16, and further in view of Mackles et al. (US Pat. No. 5,322,683).

The Mackles (WO 86/05389 – IDS), Hatfield (US Pat. No. 4,708,812) and Bergmann reference do not specifically teach the method of cleansing as claimed.

Mackles ('683) teaches a self-heating foam composition comprising aluminosilicates useful as a hair conditioner and facial cleanser.

To a person with ordinary skill in the art at the time the invention was made it would be obvious to modify the self-heating foam composition to provide a facial cleansing composition. The motivation to make such a modification is because (1) both have similar compositions with similar self-heating foam properties, and, therefore, the interchangeable use of either one will successfully yield similar results.

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Conclusion

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER